

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

**Hon. Hugh B. Scott**

v.

07CV14

(CONSENT)

\$46,420.46 UNITED STATES CURRENCY,

**Order**

Defendant,

JOHN C. DOBRZANSKI,

Claimant.

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Before the Court is plaintiff's motion to compel discovery (Docket No. 28). The parties consented to proceed before the undersigned on April 3, 2007 (Docket No. 20). Responses to this motion were due by November 13, 2007, and any reply was due by November 27, 2007, with the motion initially deemed submitted (without oral argument) on November 27, 2007 (Docket No. 31). Plaintiff wrote to Chambers that claimant's counsel indicates that he does not oppose the motion (see letter Assistant U.S. Attorney Kaufman to Juan Luciano, copy to Chambers, Oct. 29, 2007) and claimant has not filed timely a response to this motion. As a result, the Court now considers this motion submitted.

## **BACKGROUND**

This is a civil forfeiture action brought by the United States against currency<sup>1</sup> seized from claimant who allegedly concealed the money to avoid currency reporting (Docket No. 1, Compl. ¶¶ 3-5). Claimant attempted to enter the United States at the Peace Bridge on May 21, 2004, and refused to answer whether he had \$10,000 or more in monetary instruments (id. ¶¶ 3-6, 8, 9). When claimant's vehicle was searched, grocery bags were found containing envelopes each holding \$5,000, totaling \$45,000, and additional currency was found in claimant's wallet and pants pocket (id. ¶ 10), and a total of \$46,420.46 was seized (id. ¶ 12).

### *Present Motion*

At the status conference of September 11, 2007, plaintiff indicated that it was awaiting discovery responses from claimant. Claimant is presently incarcerated in New Britain, Connecticut, on unrelated charges. Claimant's counsel reported that claimant did not grasp the seriousness of this matter and was not cooperating with counsel. Plaintiff concluded that it may have to move to compel this disclosure. (Docket No. 27.)

Plaintiff thus filed the present motion (Docket No. 28) seeking answers to plaintiff's discovery requests, answers to its Interrogatories, and production of documents. Plaintiff seeks an Order precluding claimant from introducing evidence or to strike claimant's Answer and claim, under Federal Rule of Civil Procedure 37(b)(2)(B) or (C) (id.). Plaintiff argues that strike the claim or precluding evidence is within the Court's discretion where the claimant fails to comply with discovery or when the failure to produce materially affects the substantive rights of

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<sup>1</sup>Of the \$46,420.46 seized, \$45,972 was in United States currency, \$225 was converted from Canadian currency, and \$294.24 was converted from Swiss francs, Docket No. 1, Compl. ¶ 3.

the adverse party and is prejudicial to the presentation of the case (Docket No. 29, Pl. Memo. at 3-4). Plaintiff contends that it is prejudiced in presenting its case by claimant's failure to respond to the outstanding discovery (id. at 4).

### DISCUSSION

Here, claimant failed to produce discovery needed for plaintiff to pursue foreclosure of this currency and now does not oppose plaintiff's motion. That motion is **granted**; claimant shall produce the sought discovery within **thirty (30) days** of entry of this Order. Plaintiff's alternative motion to strike or preclude evidence is **denied** without prejudice. If claimant fails to furnish discovery following entry of this Order he risks having his claim dismissed as a discovery sanction, see Fed. R. Civ. P. 37(d) (citing sanctions under Rule 37(b)(2)(B) (evidence preclusion), (C) (striking pleadings)).

### CONCLUSION

For the reasons stated above, plaintiff's motion to compel (Docket No. 28) is **granted in part** as indicated above. Claimant shall produce the sought materials within **thirty (30) days** of entry of this Order. Plaintiff's alternative motion to preclude evidence or strike claimant's pleadings is **denied**.

So Ordered.

/s/ Hugh B. Scott  
Honorable Hugh B. Scott  
United States Magistrate Judge

Dated: Buffalo, New York  
November 21, 2007